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EXAMINER

SPAHN, GAY

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3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/520,051	Applicant(s) BERG, JOACHIM	
	Examiner Gay Ann Spahn	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,6,7,9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,5,8 and 11-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>14 April 2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 April 2008 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 14 April 2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Drawings

The "Replacement Sheets" of drawings were received on 14 April 2008. These drawings are approved by the examiner, except for minor corrections needed to Fig. 13 as noted below.

The drawings are objected to because:

(1) Fig. 13, reference characters "2i", "4i", and "5i" are not clear as these reference characters actually look more like "2l", "4l", and 5l" and this must be corrected.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 16, lines 1-3, the recitation of “wherein said width dimension of said first support surface is less than one third of said width dimension of said second support surface” constitutes new matter as not supported by the original disclosure as there is no textual disclosure of this recitation and the drawing figures cannot be used to support this recitation as patent drawings are not to scale.

Claim 17, lines 1-3, the recitation of “wherein said first support surface solely supports the spinal column region of the person” constitutes new matter as not supported by the original disclosure as there is no textual disclosure of this recitation and the drawing figures cannot be used to support this recitation as patent drawings are not to scale.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-17, 3, 5, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13, line 24, the recitation of "said longitudinal and said width dimensions" is vague, indefinite, and confusing as lacking clear antecedent basis and the examiner suggests amending to --said longitudinal dimension and said width dimensions dimension-- or --said longitudinal and [[said]] width dimensions--.

Claim 13, line 25, the recitation of "said search support surface" is vague, indefinite, and confusing as lacking clear antecedent basis and the examiner suggests amending to --said ~~search~~ second support surface--.

Claim Rejections - 35 USC § 102 and 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13, 3, 5, 8, and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either of DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024).

As to claim 13, either DANYLIEKO or LEE disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

- a head support section (32 in DANYLIEKO; 15 in LEE),
- a back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO; 23 in LEE) defining a first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE)

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disposed at the level of shoulder blade areas of a person, and a second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE), said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) being disposed between said head support section (32 in DANYLIEKO; 15 in LEE) and said second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE), said first and second support surfaces (between lateral indentations 28 and to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 and to right of cut-outs 31 and 33 in Fig. 2 of LEE) each having a width dimension defined transversely relative to a longitudinal extent of said supporting device and said second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) having a longitudinal dimension defined parallel to the longitudinal extent of said supporting device, said width dimension of said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) being significantly less than said width dimension of said second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) to define a pair of outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) on opposite sides of said back support section (12 in DANYLIEKO; 23 in LEE) “for receiving respective shoulder blades of the person” (the structure of the devices of DANYLIEKO and LEE are capable of performing the recited intended use within quotation marks) such that said first support surface (between

lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) disposed between said outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) supports a spinal column region of the person and said width dimension of said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) is sufficiently narrow to permit respective shoulder blade areas of the person to move downwardly below said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) without interference (see first sentence of Abstract and first, second, and last sentences of first paragraph of the Summary of Invention of DANYLIEKO; see third sentence of Abstract and col. 5, lines 43-46 of LEE) said longitudinal and width dimensions of said search [sic – second] support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) being sufficient for fully supporting the person's thoracic region.

In the alternative, either DANYLIEKO or LEE may fail to explicitly disclose that said width dimension of said first support surface is sufficiently narrow to permit respective shoulder blade areas of the person to move downwardly below said first support surface without interference.

It is well settled that changes in size/proportion do not constitute a patentable difference. See *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a

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recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Further, DANYLIEKO specifically teaches at col. 3, lines 12- 22, that “[v]ariations in the . . . profile of the shoulder cutout areas, . . . the width of the spinal support . . . may be incorporated into the present invention.”

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making the lateral indentations deeper and the width of the spinal support smaller in order that only the spinal column be supported so that the shoulder blade areas can to move downwardly past the support surface without interference and because changes in size/proportion do not constitute a patentable difference.

As to claim 3, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above, and either DANYLIEKO or LEE also discloses that the outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) are formed by laterally open recesses (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) of the back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO; 23 in LEE).

As to claim 5, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above, and either DANYLIEKO or LEE also discloses that the back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO;

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23 in LEE) and the head support section (32 in DANYLIEKO; 15 in LEE) are integrated in a rigid support unit (12 in DANYLIEKO; 23 in LEE).

As to claim 8, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above, and either DANYLIEKO or LEE also discloses that the supporting device (2 in DANYLIEKO; 10 in LEE) is a home or workplace furniture item or leisure item (workout bench 2 of DANYLIEKO and exercise bench 10 of LEE are leisure items).

As to claim 15, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above, and either DANYLIEKO or LEE also discloses that a width dimension of each said outwardly opening area (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) is greater than said width dimension of the first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE).

The examiner notes that since how the width direction of the outwardly opening area is not defined in claim 15 as it is in claim 14, either DANYLIEKO or LEE is believed to read on this claim if the width of the opening area is measured along the longitudinal direction of the device.

Claims 13, 3, 5, 8, 11, 12, and 15 are rejected under 35 U.S.C. 102(b) as anticipated by FALBO, SR. ET AL. (U.S. Patent Application Publication No. 2003/0056160).

As to claim 13, FALBO, SR. ET AL. disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

a head support section (28);

a back support section (52/58/18/22/54 in Fig. 2, but reference numerals are not consistent in Figs. 1 and 3), said back support section (52/58/18/22/54 in Fig. 2) defining a first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2, but reference numerals are not consistent in Figs. 1 and 3) disposed at the level of shoulder blade areas of a person, and a second support surface (surfaces of 52, 58, 22, 18, 54 and 30 in Fig. 2, but reference numerals are not consistent in Figs. 1 and 3), said first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2) being disposed between said head support section (28) and said second support surface (surfaces of 52, 58, 22, 18, 54 and 30 in Fig. 2), said first and second support surfaces (surface of 52 between unnumbered filler section and filler section 20 and surfaces of 52, 58, 22, 18, 54, and 30 in Fig. 2) each having a width dimension defined transversely relative to a longitudinal extent of said supporting device (10) and said second support surface (surfaces of 52, 58, 22, 18, 54 and 30 in Fig. 2) having a longitudinal dimension defined parallel to the longitudinal extent of said supporting device (10), said width dimension of said first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2) being significantly less than said width dimension of said second support surface (surfaces of 52, 58, 22, 18, 54 and 30 in Fig. 2) to define a pair of outwardly opening areas (opening 60 and 64 in Fig. 2, but reference numerals are not consistent in Figs. 1 and 3) on opposite sides of said back support section (52/58/18/22/54 in Fig. 2) “for receiving respective shoulder blades of the person” (the structure of the device 10 of

FALBO, SR. ET AL. is capable of performing the recited intended use within quotation marks) such that said first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2) disposed between said outwardly opening areas (openings 60 and 64 in Fig. 2) supports a spinal column region of the person and said width dimension of said first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2) is sufficiently narrow to permit respective shoulder blade areas of the person to move downwardly below said first support surface (surface of 52 between unnumbered filler section and filler section 20 in Fig. 2) without interference, said longitudinal and said width dimensions of said search [sic – second] support surface (surfaces of 52, 58, 22, 18, 54 and 30 in Fig. 2) being sufficient for fully supporting the person's thoracic region.

As to claim 3, FALBO, SR. ET AL. disclose the device of claim 13 as discussed above, and FALBO, SR. ET AL. also disclose that the outwardly opening areas (60, 64 in Fig. 2) are formed by laterally open recesses (60, 64 in Fig. 2) of the back support section (52/58/18/22/54 in Fig. 2).

As to claim 5, FALBO, SR. ET AL. disclose the device of claim 13 as discussed above, and FALBO, SR. ET AL. also disclose that the back support section (52/58/18/22/54 in Fig. 2) and the head support section (28) are integrated in a rigid support unit (10).

As to claim 8, FALBO, SR. ET AL. disclose the device of claim 13 as discussed above, and FALBO, SR. ET AL. also disclose that the supporting device (10) is a home or workplace furniture item or leisure item (10 is workplace furniture item).

As to claim 11, FALBO, SR. ET AL. disclose a supporting device for a person's back and head area,

with a back support section (52 to left of 58 in Fig. 2 and 58/18/22/54) and

with a head support section (28),

wherein a partial area of the back support section (52 to left of 58 in Fig. 2 and 58/18/22/54) has, at the level of shoulder blade areas of the back area, a support surface (upper surface of 52) in a spinal column area (52), and

on both sides of the support surface (upper surface of 52), open areas (60, 64 in Fig. 2, but reference numerals not consistent in Figs. 1 and 3) which are configured in such a way that the shoulder blade areas can move downward past the support surface (upper surface of 52),

the open areas (60, 64 in Fig. 2) each having an upper edge (left edge of 56 in Fig. 2) adjacent the head support section (28) and a lower edge (right edge of 58 in Fig. 2) adjacent the back support section (52 to left of 58 in Fig. 2 and 58/18/22/54),

the lower edge (left edge of 56 in Fig. 2) being substantially perpendicular to a longitudinal centerline of the back support section (52 to left of 58 in Fig. 2 and 58/18/22/54).

As to claim 12, FALBO, SR. ET AL. disclose the supporting device of claim 11 as discussed above, and FALBO, SR. ET AL. also disclose that the support surface (upper surface of 52) in the spinal column area (52) is sufficiently narrow to support only the spinal column and the shoulder blade areas can move downward past the support surface without interference.

As to claim 15, FALBO, SR. ET AL. disclose the device of claim 13 as discussed above, and FALBO, SR. ET AL. also disclose that a width dimension of each said outwardly opening area (60, 64 in Fig. 2) is greater than said width dimension of the first support surface (52).

The examiner notes that since how the width direction of the outwardly opening area is not defined in claim 15 as it is in claim 14, FALBO, SR. ET AL. is believed to read on this claim if the width of the opening area is measured along the longitudinal direction of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as obvious over either DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024) in view of MORIYAMA (U.S. Patent No. 3,606,461).

As to claim 14, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above.

Neither DANYLIEKO nor LEE also explicitly disclose that said outwardly opening areas each have a width dimension and a length dimension, each said width dimension of said outwardly opening areas extending outwardly from a longitudinal edge of said

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first support surface to an outer extent in line with an outer longitudinal edge of said second support surface, each said length dimension of said outwardly opening areas being defined longitudinally between said head support section and said second support surface, said width dimension of each said outwardly opening area being greater than said length dimension of said area.

MORIYAMA disclose a device (20 in Figs. 5 and 9) having an outwardly opening area (30) with a width dimension and a length dimension, wherein said width dimension is greater than said length dimension.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making the opening areas be deeper than they are wide as taught by MORIYAMA in order to narrow the width of the spinal column support area and thus prevent interference of the shoulder blades of the user and the outer edges of the opening areas.

As to claim 16, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above.

Neither DANYLIEKO nor LEE discloses that said width dimension of said first support surface is less than one third of said width dimension of said second support surface.

MORIYAMA disclose a device (18 in Figs. 4 and 7) having an outwardly opening areas (22, 22), wherein a width dimension of the first support surface (between the outwardly opening areas 22, 22) is less than one third of the width dimension of the second support surface (26a).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making the width dimension of said first support surface is less than one third of said width dimension of said second support surface as taught by MORIYAMA in order to narrow the width of the spinal column support area and thus prevent interference of the shoulder blades of the user and the outer edges of the opening areas.

Claims 13, 3, 5, 8, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either of DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024) in view of O'CONNOR (U.S. Patent Application Publication No. 2003/0220176).

As to claim 13, either DANYLIEKO or LEE disclose a longitudinally elongate supporting device for a person's back and head area, said device comprising:

- a head support section (32 in DANYLIEKO; 15 in LEE),
- a back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO; 23 in LEE) defining a first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) disposed at the level of shoulder blade areas of a person, and a second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE), said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) being disposed between said head support section (32 in DANYLIEKO; 15 in LEE) and said second support

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surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE), said first and second support surfaces (between lateral indentations 28 and to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 and to right of cut-outs 31 and 33 in Fig. 2 of LEE) each having a width dimension defined transversely relative to a longitudinal extent of said supporting device and said second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) having a longitudinal dimension defined parallel to the longitudinal extent of said supporting device, said width dimension of said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) being significantly less than said width dimension of said second support surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) to define a pair of outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) on opposite sides of said back support section (12 in DANYLIEKO; 23 in LEE) “for receiving respective shoulder blades of the person” (the structure of the devices of DANYLIEKO and LEE are capable of performing the recited intended use within quotation marks) such that said first support surface (between lateral indentations 28 in Fig. 3 of DANYLIEKO; between cut-outs 31 and 33 in Fig. 2 of LEE) disposed between said outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) supports a spinal column region of the person, said longitudinal and width dimensions of said search [sic – second] support

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surface (to left of lateral indentations 28 in Fig. 3 of DANYLIEKO; to right of cut-outs 31 and 33 in Fig. 2 of LEE) being sufficient for fully supporting the person's thoracic region.

In the alternative, either DANYLIEKO or LEE may fail to explicitly disclose that said width dimension of said first support surface is sufficiently narrow to permit respective shoulder blade areas of the person to move downwardly below said first support surface without interference.

O'CONNOR discloses that that it is well known in the art to have a supporting surface which has a support surface narrow enough to support only the spinal column area of a user so that the user's shoulder blade areas (see Fig. 7) can move downwardly past the support surface without interference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making only the spinal column area around the user's shoulder blades be support as taught by O'CONNOR in order that the shoulder blade areas can to move downwardly past the support surface without interference.

As to claim 3, either DANYLIEKO or LEE in view of O'CONNOR discloses the device of claim 13 as discussed above, and the resulting device from the combination of either DANYLIEKO or LEE in view of O'CONNOR also discloses that the outwardly opening areas (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) are formed by laterally open recesses (lateral indentations 28 in Fig. 3 of DANYLIEKO; cut-outs 31 and 33 in Fig. 2 of LEE) of the back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO; 23 in LEE).

As to claim 5, either DANYLIEKO or LEE in view of O'CONNOR discloses the device of claim 13 as discussed above, and the resulting device from the combination of either DANYLIEKO or LEE in view of O'CONNOR also discloses that the back support section (12 in DANYLIEKO; 23 in LEE), said back support section (12 in DANYLIEKO; 23 in LEE) and the head support section (32 in DANYLIEKO; 15 in LEE) are integrated in a rigid support unit (12 in DANYLIEKO; 23 in LEE).

As to claim 8, either DANYLIEKO or LEE in view of O'CONNOR discloses the device of claim 13 as discussed above, and the resulting device from the combination of either DANYLIEKO or LEE in view of O'CONNOR also discloses that the supporting device (2 in DANYLIEKO; 10 in LEE) is a home or workplace furniture item or leisure item (workout bench 2 of DANYLIEKO and exercise bench 10 of LEE are leisure items).

As to claim 17, either DANYLIEKO or LEE discloses the device of claim 13 as discussed above.

Neither DANYLIEKO nor LEE discloses that said first support surface solely supports the spinal column region of the person.

O'CONNOR disclose a device (10) having a first support surface (surface of 26) solely supports the spinal column region of the person.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making the first support surface solely supports the spinal column region of the person as taught by MORIYAMA in order to narrow the width of the spinal column support area and thus

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prevent interference of the shoulder blades of the user and the outer edges of the opening areas.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as obvious over either DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024) in view of any one of FALBO, SR. ET AL. (U.S. Patent Application Publication No. 2003/0056160), CHANDLER (U.S. Patent No. 5,275,176), and CASTILLO (U.S. Patent No. 4,614,338).

As to claim 11, either DANYLIEKO or LEE discloses a supporting device for a person's back and head area,

with a back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) and

with a head support section (2 in DANYLIEKO; portion left of cut-outs 31 and 33 of 23 in Fig. 2 of LEE),

wherein a partial area of the back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) has, at the level of shoulder blade areas of the back area, a support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) in a spinal column area, and

on both sides of the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE), open areas (28, 28 in DANYLIEKO; 31, 33 in Fig. 2 of LEE) which are configured in such a way that the

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shoulder blade areas can move downward past the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE), and

the open areas (28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) each having an upper edge (upper edge of 28, 28 by 6 in Fig. 3) adjacent the head support section (2 in DANYLIEKO; portion left of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) and a lower edge (lower edge of 28, 28) adjacent the back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE).

Neither DANYLIEKO nor LEE explicitly discloses that the lower edge is substantially perpendicular to a longitudinal centerline of the back support section.

Any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose a supporting device (10 in Fig. 3 of FALBO, SR. ET AL.; 10 in Fig. 2A and 2E of CHANDLER; and 80 in Fig. 1 of CASTILLO) having a head support section (28 of FALBO, SR. ET AL.; 24 of CHANDLER, and upper end of 80 of CASTILLO) and a back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO) with open areas (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO), wherein the lower edge of the open area (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO) is substantially perpendicular to a longitudinal centerline of the back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by making the lower edge of the open areas be substantially perpendicular to a longitudinal centerline of the back support section as taught by any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO in order to ensure enough room for shoulder blades and arms to clear the open areas.

As to claim 12, either DANYLIEKO or LEE in view of any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose the supporting device of claim 11 as discussed above, and the resulting supporting device from the combination of either DANYLIEKO or LEE in view of any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO would have the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) in the spinal column area being sufficiently narrow to support only the spinal column (between 28, 28 in DANYLIEKO; between 31, 33 in Fig. 2 of LEE as modified by any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO) so that the shoulder blade areas can move downwardly past the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) without interference.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as obvious over either DANYLIEKO (U.S. Patent No. 5,649,886) or LEE (U.S. Patent No. 4,861,024) in view of O'CONNOR (U.S. Patent Application Publication No. 2003/0220176) and any

one of **FALBO, SR. ET AL.** (U.S. Patent Application Publication No. 2003/0056160), **CHANDLER** (U.S. Patent No. 5,275,176), and **CASTILLO** (U.S. Patent No. 4,614,338).

As to claim 11, either DANYLIEKO or LEE discloses a supporting device for a person's back and head area,

with a back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) and

with a head support section (2 in DANYLIEKO; portion left of cut-outs 31 and 33 of 23 in Fig. 2 of LEE),

wherein a partial area of the back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) has, at the level of shoulder blade areas of the back area, a support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) in a spinal column area, and

on both sides of the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE), open areas (28, 28 in DANYLIEKO; 31, 33 in Fig. 2 of LEE), and

the open areas (28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) each having an upper edge (upper edge of 28, 28 by 6 in Fig. 3) adjacent the head support section (2 in DANYLIEKO; portion left of cut-outs 31 and 33 of 23 in Fig. 2 of LEE) and a lower edge (lower edge of 28, 28) adjacent the back support section (12 in DANYLIEKO; portion right of cut-outs 31 and 33 of 23 in Fig. 2 of LEE).

Neither DANYLIEKO nor LEE explicitly discloses that: (1) the open areas are configured in such a way that the shoulder blade areas can move downward past the support surface; and (2) the lower edge is substantially perpendicular to a longitudinal centerline of the back support section.

O'CONNOR discloses that it is well known in the art to make the area supporting the spinal column around the shoulder blades sufficiently narrow so that the user's shoulder blades can move downwardly past the support surface without interference.

Any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose a supporting device (10 in Fig. 3 of FALBO, SR. ET AL.; 10 in Fig. 2A and 2E of CHANDLER; and 80 in Fig. 1 of CASTILLO) having a head support section (28 of FALBO, SR. ET AL.; 24 of CHANDLER, and upper end of 80 of CASTILLO) and a back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO) with open areas (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO), wherein the lower edge of the open area (60, 62 of FALBO, SR. ET AL.; areas when 28 and 26 are removed CHANDLER, and 82, 84 of CASTILLO) is substantially perpendicular to a longitudinal centerline of the back support section (52/54 of FALBO, SR. ET AL.; 16 of CHANDLER, and middle of 80 of CASTILLO).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of either DANYLIEKO or LEE by: (1) configuring the open areas in such a way that the shoulder blade areas can move downward past the support surface as taught by O'CONNOR in order for the user a full

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range of muscle extension to maximize exercise effectiveness; and (2) making the lower edge of the open areas be substantially perpendicular to a longitudinal centerline of the back support section as taught by any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO in order to ensure enough room for shoulder blades and arms to clear the open areas.

As to claim 12, either DANYLIEKO or LEE in view of O'CONNOR and any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO disclose the supporting device of claim 11 as discussed above, and the resulting supporting device from the combination of either DANYLIEKO or LEE in view of O'CONNOR and any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO would have the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) in the spinal column area being sufficiently narrow to support only the spinal column (either between 28, 28 in DANYLIEKO or between 31, 33 in Fig. 2 of LEE as modified by O'CONNOR and any one of FALBO, SR. ET AL., CHANDLER, and CASTILLO) so that the shoulder blade areas can move downwardly past the support surface (upper surface of 12 between 28, 28 in DANYLIEKO; upper surface of 23 between 31, 33 in Fig. 2 of LEE) without interference.

Response to Arguments

Applicant's arguments with respect to new claims 13-17 and claims 3, 5, and 8 made dependent upon new claim 13 have been considered but are moot in view of the new ground(s) of rejection.

However, the examiner notes that she disagrees with Applicant's contention that "the center section 52 in Falbo, Sr. et al. '196 does not have a width dimension sufficiently narrow to permit respective shoulder blade areas of the person to move downwardly below the center section without interference, as required by claim 13." This is mere conjecture on Applicant's part.

Further, the examiner also disagrees that DANYLIEKO fails to disclose the structure recited in claim 13 as noted in the examiner's rejection above based upon DANYLIEKO. It is mere conjecture on Applicant's part to argue that DANYLIEKO's width dimension of the first support surface is not sufficiently narrow to permit the user's shoulder blades to move down past the support surface without interference as this is exactly what DANYLIEKO says his device does.

Applicant's arguments filed 14 April 2008 with respect to claims 11 and 12 have been fully considered but they are not persuasive.

The examiner disagrees that FALBO, SR. ET AL. does not disclose all the elements of claim 11. Applicant argues that center section 52 is wide enough to support a patient lying on her side as shown in Fig. 1. The examiner notes that in Fig. 1 all filler sections 16, 18, 20, and 22 are in their horizontal and not vertical positions and that is why the device 10 is able to support a person lying on her side. Center section 52 is sufficiently narrow to permit a user's shoulder blades to move downwardly past the center section without interference.

The examiner also disagrees that DANYLIEKO fails to disclose that the open areas is configured in such a way that the shoulder blade areas of the user can move

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downwardly past the support surface. However, even if DANYLIEKO does fail to disclose this, O'CONNOR has been combined with DANYLIEKO in order to teach the narrowing of the area between the cut-outs to ensure that the shoulder blades of the user move past the support surface without interference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

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/Gay Ann Spahn/
Gay Ann Spahn, Patent Examiner
April 27, 2008